

The Gazette



of India

EXTRAORDINARY

PUBLISHED BY AUTHORITY

NEW DELHI, FRIDAY, OCTOBER 29, 1948

GOVERNMENT OF INDIA

MINISTRY OF LAW

New Delhi, the 29th October, 1948

ORDINANCE No. XXIX OF 1948

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ORDINANCE

to limit the dividends which may be paid by public companies.

WHEREAS an emergency has arisen which makes it necessary to limit the dividends which may be paid by public companies ;

NOW, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance :—

Preliminary

1. Short title, extent and commencement.—(1) This Ordinance may be called the Public Companies (Limitation of Dividends) Ordinance, 1948.

(2) It extends to all the Provinces of India, and also to every ~~According to~~ State to the extent to which the Dominion Legislature has power to make law ~~for that~~ State as respects the matters dealt with in this Ordinance.

(3) It shall come into force at once.

2. Definitions.—In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) "Companies Act" means the Indian Companies Act, 1913 (VII of 1913) ;

(b) "company" means a public company as defined in clause (13A) of section 2 of the Companies Act, and includes—

(i) the Imperial Bank of India constituted under the Imperial Bank of India Act, 1920 (XLVII of 1920) ;

(ii) any trading, banking, insurance or finance corporation constituted by or under any other law in force in India, provided that such corporation, if it had been registered as a company under the Companies Act, would not have been a "private company" within the meaning of that Act; and

(iii) any other incorporated body which the Central Government may, by general or special order, declare to be a public company for the purposes of this Ordinance,

but does not include a co-operative society registered or deemed to be registered under the Co-operative Societies Act, 1912 (II of 1912), or any other law relating to co-operative societies in force for the time being in any part of India;

(c) "financial year" means the year commencing on the 1st day of April.

Limitation of dividends

3. Dividends not to exceed certain limits.—No company shall, after the commencement of this Ordinance, distribute as dividend during any financial year, any sum which exceeds, or which, when taken with any sum already distributed as dividend during the same year whether before or after the commencement of this Ordinance, will exceed—

(a) six per cent. of the paid-up capital of the company as on the last day of the period in respect of which the dividend is distributed, after deducting from such capital all amounts attributable to the capitalisation, on or after the 1st day of April, 1946, of one or more of the following, namely, reserves, profits and appreciation of assets, or

(b) the average annual dividend of the company, determined in the manner specified in sections 5 to 7,

whichever is higher.

4. Limit of six per cent. to be exclusive of income-tax paid by company.—The limit of six per cent. specified in clause (a) of section 3 shall be applied to the amount of dividend distributed by the company among its shareholders, payments made by the company by way of income-tax being ignored.

5. Dividends and periods to be taken into account for determining average annual dividend.—The average annual dividend referred to in clause (b) of section 3 shall be determined with reference to—

(a) the total of the dividends distributed by such company (otherwise than by way of bonus shares) during the period of two years commencing on the 1st day of April, 1946, and ending with the 31st day of March, 1948, and

(b) the total of the periods in respect of which each such dividend has been distributed, no period however being counted more than once:

Provided that where an interim dividend for any period has been distributed before the 1st day of April, 1946, and a final dividend has been distributed in respect of the same period on or after that date but on or before the 31st day of March, 1948, such interim dividend shall be added to the total of the dividends referred to in clause (a):

Provided further that where an interim dividend for any period has been distributed on or after the 1st day of April, 1946 and on or before the 31st day of March, 1948, and a final dividend has been or is distributed in respect of the same period after the latter date, then—

(i) if the final dividend was distributed before the 5th day of October, 1948, it shall be added to the total of the dividends referred to in clause (a):

(ii) if the final dividend was or is distributed on or after the 5th day of October, 1948, the interim dividend and the period in respect of which it was distributed shall not be taken into account for the purposes of this section ; but it shall be open to the company to claim that the interim dividend (but not the final dividend) shall be added to the total of the dividends referred to in clause (a), in which case the period in respect of which such interim dividend was distributed shall be taken into account for the purposes of clause (b).

6. Date of distribution of dividend.—For the purposes of this Ordinance, a dividend shall be deemed to have been distributed by a company on the date on which the shareholders or their legal representatives have a right to receive it from the company, whether or not it has been actually paid.

7. Provision for increase or reduction in paid-up capital.—(1) (a) Where, subsequent to the distribution by a company of any dividend which has to be taken into account for the purposes of clause (b) of section 3, its paid-up capital is increased by any amounts actually paid in cash, or

(b) where, before the distribution of any such dividend, the paid-up capital of a company is increased by any amounts actually paid in cash, but the amounts so paid are not entitled to the benefit of such dividend, such dividend, and every prior dividend which has to be taken into account for the purposes aforesaid, shall be deemed to have been augmented—

(i) *pro rata*, if the increase took place before the commencement of this Ordinance ; and

(ii) by a sum equal to six per centum per annum of the amounts paid in cash as aforesaid, if the increase took place after the commencement of this Ordinance.

(2) (a) Where subsequent to the distribution by a company of any dividend which has to be taken into account for the purposes of clause (b) of section 3, its paid-up capital is reduced, or

(b) where, before the distribution of any such dividend, the paid-up capital of a company is reduced, but the whole of the capital as it stood before such reduction is entitled to the benefit of such dividend, such dividend, and every prior dividend which has to be taken into account for the purposes aforesaid, shall be deemed to have been diminished *pro rata*.

Preference shares

8. Special provision for preference shares.—Nothing contained in this Ordinance shall be deemed to limit in any way the dividend payable on preference shares issued and subscribed for, before the commencement of this Ordinance.

9. Prohibition of issue of preference shares at more than six per cent.—No company shall, after the commencement of this Ordinance, issue preference shares carrying a right to a dividend at a rate exceeding six per centum per annum.

Miscellaneous

10. Power to make rules.—(1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(i) the adaptation of the provisions of this Ordinance with a view to their application to all or any of the bodies declared to be public companies under sub-clause (iii) of clause (b) of section 2 ;

(ii) the prevention of the evasion of the provisions of this Ordinance, and the removal of difficulties in giving effect thereto.

11. Power to make exemptions, etc.—The Central Government may, by notification in the official Gazette, exempt any company or class of companies from all or any of the provisions of this Ordinance, or make any modification in the application of the said provisions to any company or class of companies.

12. Penalty.—Any director, managing agent, manager or other officer or employee of a company who contravenes or attempts to contravene, or abets the contravention of or attempt to contravene, any of the provisions relating to the distribution of dividends, or the issue of preference shares, contained in this Ordinance or in any rule, notification or order issued thereunder, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

C. RAJAGOPALACHARI,
Governor-General.

K. Y. BHANDARKAR,
Secy. to the Govt. of India.